

# Preface

In October 2006, a group of Church historians went on a tour of early Church history sites. This two-week trip took us from Sharon, Vermont, to Carthage, Illinois. As we travelled, there was lots of time to share ideas and stories. During one of those long afternoons, John W. (Jack) Welch and I talked about the possibility of combining the Joseph Smith Papers Project's Legal and Business Series with his teaching of a course on Joseph Smith and early American law at the J. Reuben Clark Law School at Brigham Young University. Teaming up in this way seemed like a perfect fit, and so it has been.

Church Historian Elder Marlin K. Jensen has called the Joseph Smith Papers Project "the single most significant historical project of our generation."<sup>1</sup> When completed, it will present to the world a monumental collection of documents relating to Joseph Smith, including his diaries, journals, revelations, correspondence, as well as administrative, business and legal documents. The print version will be approximately twenty-four volumes, and the web version will include an even broader array. A cadre of several dozen scholars, researchers, archivists, transcribers, copyeditors, and other professionals staff the project. Made possible through the generosity of the Larry H. Miller family, the project provides a unique opportunity to gather, analyze, and publish these papers that future generations of writers will use to write more factually accurate histories of the life of Joseph Smith Jr. and the foundation of The Church of Jesus Christ of Latter-day Saints and the Mormon people.

Gordon Madsen, Sharalyn Howcroft, and I, as the original members of the Joseph Smith Papers legal team, have spent much of the past decade gathering and creating case files for each of the identified lawsuits involving Joseph

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1. R. Scott Lloyd, "'Historian by Yearning' Collects, Preserves," *Church News of The Church of Jesus Christ of Latter-day Saints*, May 28, 2005.

Smith. Initial estimates were that he had been involved in about fifty lawsuits. As we collected, organized and compiled these legal records, the number kept increasing, topping now at more than 220 cases. These lawsuits range from simple collection cases to complex actions involving sophisticated legal theories, and Joseph retained scores of attorneys to both bring and defend these actions. They include both civil and criminal matters. The case files we created include indexes, documents, transcripts, and secondary materials—almost like pleading files that one would find in law firms today. To these files are added editorial and footnote annotations to give background and context.

While the annotations coincide in many respects with the work being done in presenting documents in the other parts of the Joseph Smith Papers, the documents going into the legal series require additional analysis to provide the reader with an understanding of the applicable laws and judicial procedures. Such legal analysis presents modern lawyers and readers with a number of challenges. For example, all of the cases involving Smith predate the first enactment of modern American civil procedure in 1848. Consequently, working with Joseph Smith's legal papers—just like working with the legal papers of John Adams, John Marshall, Daniel Webster, Andrew Jackson, Abraham Lincoln, or Oliver Cowdery—requires an understanding of early nineteenth-century law in America that blended both the British and American systems.

At the same time that the legal papers team was doing research, a growing series of articles about Joseph Smith's legal experiences was being published in *BYU Studies*. Professor Welch, the editor-in-chief of *BYU Studies*, planned to use those articles as a main part of the curriculum for his law school course. As he and I, during our tour, discussed the possibilities of combining our efforts, the basic contours of this groundbreaking class and this book began to take shape. Using these lawsuits as collected and organized for the Joseph Smith Papers Project, the course could explore the broader contextual dimensions of the emergence of the American legal system in the frontiers of early American Republic in which Smith and his people lived in the 1820s to 1840s. From his early trials in New York, to land, banking, and collections cases in Ohio, to the criminal prosecutions arising from the Mormon War of 1838 in Missouri, to his activity as a politician (first as mayor of Nauvoo and then as a candidate for the presidency), to his murder while in custody on other charges following his court appearance in Carthage concerning lawsuits filed after the destruction of the press used to print *The Expositor*, Smith's legal experiences largely parallels and in many respects epitomizes the American justice system of his day.

Upon arriving home from our trip, Jack sought and readily received permission to teach the course. It has now been taught for eight years. This

reader is substantively a result of these classes. Many have assisted Jack, Gordon, and me in running this course, including Joseph Bentley, Morris Thurston, Ross Boundy, and Kelly Schaeffer-Bullock, who have served as guest lecturers and professional contributors. Each year our teaching materials have been improved and developed, based on new discoveries, classroom experiences, student feedback, and the ongoing work of research assistants too numerous to name and to whom a great debt of gratitude is owed.

I have been overwhelmed at the capacity and dedication of the students who have taken our course. They have each produced research papers, memoranda, and personal reports of their findings and impressions. On many occasions they have taken the preliminary drafts of transcripts in the case files and have made significant contributions to preparing those materials for future publication in the *Joseph Smith Papers Legal and Business Records* series. This has included not only doing excellent historical legal research, but also assisting in creating glossaries, chronologies, and annotations. Our law students have also delved into historical records and early American legal treatises and judicial opinions. The groundbreaking research papers by Nathaniel Wadsworth and David Stott were so good that they were published in *BYU Studies* and now appear in this reader.

Most gratifying has been the interest of our students in the life of the Prophet Joseph Smith and how studying his legal involvement provides unique insights into his character and world. It has been and continues to be an exciting process to explore something that has been often misunderstood, if not completely overlooked, by historians and readers of all persuasions. But undeniably, Joseph Smith was intimately, actively, and consistently involved in the American legal system. To ignore these important activities is to miss much of how he spent his time and energies, brilliantly and effectively—so much so that Daniel H. Wells, himself a lawyer, judge, and attorney general, who was well acquainted with Smith, would opine: “I have known legal men all my life. Joseph Smith was the best lawyer that I have ever known in my life.”<sup>2</sup> Our studies continue to prove that Wells was right.

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2. Daniel H. Wells, as quoted in *The Journal of Jesse Nathaniel Smith: Six Decades in the Early West: Diaries and Papers of a Mormon Pioneer, 1834–1906* (Salt Lake City: Jesse N. Smith Family Association, 1953), 456.